

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VECTAIR SYSTEMS INC.,

Petitioner,

v.

FRESH PRODUCTS, INC.,

Patent Owner.

Case No. IPR2024-00824

Patent No. 10,145,098

DECLARATION OF JEFFREY A. SMITH

I, Jeffrey Smith, declare and state as follows:

1. The following statements are based on my personal knowledge
2. I am currently the Chief Operating Officer for Fresh Products, Inc. (hereinafter “Fresh Products”), which is the owner of U.S. Patent No. 10,145,098 (“the ’098 Patent”). I am also an inventor of the ’098 Patent.
3. I have reviewed Petitioner’s Exhibit 1005, titled “Fresh Products 3WDS60SAP Wave 3D Urinal Deodorizer Screen,” which lists a “Date First Available” of May 10, 2013. As described below, the product shown in Exhibit 1005 was not available for sale on May 10, 2013.

4. I have reviewed Petitioner's Exhibit 1006, titled "Fresh Products Wave 3D," which lists a "Date First Available" of September 3, 2014. As described below, the product shown in Exhibit 1006 was not available for sale on September 3, 2014.

5. Exhibit 1005 and Exhibit 1006 are collectively referred to as "the Amazon Listings." Fresh Products did not create the Amazon Listings, and Fresh Products does not control the content of the Amazon Listings. I am not aware of how Amazon may have come up with the dates on Exhibits 1005 and 1006.

6. The images in the Amazon Listings depict a product currently marketed by Fresh Products as the Wave 3D Urinal Screen.

7. The Wave 3D Urinal Screen design was first publicly disclosed by Fresh Products at the ISSA InterClean North America trade show in November of 2014. I attended this trade show, which was held in Orlando, FL from November 4 through 7, 2014.

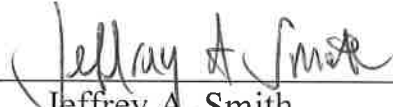
8. Fresh Products received the first injection mold for the Wave 3D in February of 2015.

9. Fresh Products first manufactured production units of the Wave 3D Urinal Screen in March of 2015.

10. No offers for sale of the Wave 3D occurred before November of 2014, and thus the Amazon Listings could not have existed, at least in their current form that depicts the Wave 3D Urinal Screen, prior to November of 2014.

11. I declare that all statements made herein of my own knowledge are true and that any statements made on information and belief are believed to be true. I declare that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code.

Dated: August 7, 2024



Jeffrey A. Smith

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